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6 **SUPERIOR COURT OF THE STATE OF WASHINGTON**  
7 **FOR THURSTON COUNTY**

8 DEBORAH SENN, Insurance  
9 Commissioner,

10 Petitioner,

11 v.

12 KPS HEALTH PLANS, and its officers and  
13 directors,

14 Respondent.

NO. 99-2-01441-1

PETITION FOR ORDER CONFIRMING  
RECEIVER'S PLAN OF  
REHABILITATION

15 DEBORAH SENN, Insurance Commissioner of the State of Washington,  
16 Statutory Receiver of KPS Health Plans, in Rehabilitation ("KPS"), JAMES T.  
17 ODIORNE, Deputy Insurance Commissioner and court-appointed Receiver of KPS,  
18 JOHN B. WOODALL, Assistant Deputy Insurance Commissioner and court-  
19 appointed Deputy Receiver of KPS, and JOHN F. HAMJE, Special Deputy Insurance  
20 Commissioner and court-appointed Deputy Receiver of KPS, by and through their  
21 legal counsel, Victoria L. Vreeland of Gordon, Thomas, Honeywell, Malanca,  
22 Peterson & Daheim, P.L.L.C., Special Assistant Attorney General, hereby petition  
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1 the Court for entry of an Order Confirming Receiver's Plan of Rehabilitation of KPS  
2 HealthPlans, and states as follows:

### 3 **HISTORY OF THE PROCEEDINGS**

4 1. **Order of Rehabilitation.** Pursuant to Chapters 48.31, 48.44, and  
5 48.99 RCW, on August 2, 1999, this Court entered an Order of Rehabilitation and  
6 Appointment of Receiver placing KPS into rehabilitation proceedings and appointing  
7 Receivers and legal counsel.

8 2. **Prior Actions.** The First Interim Court Report was filed herein on  
9 October 15, 1999, reporting on the status of KPS and the significant actions taken in  
10 the receivership. Based on Petitions submitted by the Receiver, the Court has  
11 previously approved the granting of a security interest to KeyBank and the sale of  
12 NorthwestOne, L.L.C. The Court has also entered an Order authorizing the  
13 Receiver to seek an additional stay of a pending federal case in which KPS is a  
14 defendant; and entered a Scheduling Order for this Petition. *See paragraph 13*  
15 *below.*

### 16 **STANDARDS OF REHABILITATION**

17 3. The Order of Rehabilitation directs the Insurance Commissioner, as  
18 Receiver, to conduct the business of KPS, to administer its assets under the  
19 supervision of the Court, and to take such steps toward removal of the causes and  
20 conditions which have made rehabilitation necessary as the Court may direct.  
21 These are the mandates of RCW 48.31.040(1) and (4). The "process of insurer  
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1 rehabilitation is preferred to that of liquidation...." *Kueckelhan v. Federal Old Line*  
2 *Ins. Co.*, 69 Wn.2d 392, 407 , 418 P.2d 443 (1966).

3 4. The authority, role and function of the Court and of the Insurance  
4 Commissioner in statutory rehabilitation proceedings are set forth in two decisions  
5 interpreting and applying RCW 48.31.040. The relevant portions of the opinions are  
6 as follows:

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8 Thus, the legislature, [in enacting RCW 48.31.030(1)] in  
9 its wisdom, in its reliance upon the presumed expertise  
10 and experience of a duly elected and functioning state  
11 official, and in the public interest, vested the  
12 Commissioner with a realistic and effective control over  
13 the administration of the affairs and assets of an insurer  
14 found to be in need of rehabilitation. The authority so  
15 vested necessarily contemplates and embraces a  
16 considerable degree of independent administrative  
17 judgment and discretion to be exercised by the  
18 Commissioner if [s]he is to carry out the responsibility  
19 and trust imposed upon [her].... In this vein, and speaking  
20 of the part played by the court in a rehabilitation  
21 proceedings, we said in *Kueckelhan v. Federal Old Line*  
22 *Ins. Co. (Mutual)*, 69 Wn.2d 392, 418 P.2d 443 (1966), at  
23 406:

24 "The court's sole and proper function in rehabilitation  
25 proceedings is to direct--that is, to supervise and review--  
26 the actions of the Insurance Commissioner while [s]he is  
operating the seized insurance company. The courts  
cannot dictate or outline the general policy or course of  
conduct of the Insurance Commissioner or [her]  
...department. [Citing case.], because this outline is  
dependent on the terms of the applicable statutory  
provisions and not upon judicial discretion. Our statutory  
provisions, therefore, properly place the responsibility on  
both the Insurance Commissioner and the courts, the  
Commissioner being required to follow the statutory  
mandates and to use reasonable discretion in the  
rehabilitation of a seized company, with abuses of

1 discretion to be checked by the judiciary. [Citing  
2 authority.]

3 In this capacity, the court is acting much in the same  
4 manner as it acts when overseeing a trust or probate;  
5 only in this instance, it is reviewing the Insurance  
6 Commissioner who is acting like a receiver or trustee and  
7 as an officer of the state. [Citing authority and case.]  
8 Moreover, the Insurance Commissioner is not acting as  
9 an agent of the courts. [S]he holds [her]...position as  
10 rehabilitator by force of legislative enactment, confirmed  
11 by court appointment. Consequently, the court's power of  
12 discretion, vis-a-vis the Insurance Commissioner, is  
13 curtailed by the Commissioner's statutory powers and the  
14 statutes governing the management of insurance  
15 companies and rehabilitation proceedings. [Citing  
16 authority.]

17 This then is the role carried on by our courts under our  
18 laws relating to statutory rehabilitation. The court does  
19 not conduct the business of the seized company. This  
20 task is assigned by the legislature to the Insurance  
21 Commissioner who acts to protect the general public, the  
22 policyholders and owners of the company, and the  
23 company itself."

24 . . .

25 The primary duty impressed by the statute upon the  
26 Commissioner in a rehabilitation proceeding is to correct  
or remove the causes and conditions which have made  
the rehabilitation proceeding necessary and, if possible,  
to conserve and restore the company to a viable status  
for the benefit of the policyholders. Toward this end [s]he  
must be afforded that freedom of action in the over-all  
management of the company which will permit [her]...to  
knowledgeably evaluate, plan, devise, and implement a  
program which in [her]...best judgment and in keeping  
with [her]...expertise in the field of insurance will  
accomplish the objective of the proceedings. . . . As the  
program of rehabilitation takes form and the steps unfold,  
the trial court in its supervisory and reviewing role may  
not substitute its judgment for that of the Commissioner,  
but may and should only intervene or restrain when it is

made to appear that the Commissioner is manifestly abusing the authority and discretion vested in [her]...and/or is embarking upon a capricious, untenable or unlawful course.

*Kueckelhan v. Federal Old Line Ins. Co.*, 74 Wn.2d 304, 314-316, 444 P.2d 667 (1968).

5. The fundamental standard applicable to a rehabilitation plan is that it may not impose harsher consequences on claimants than a liquidation of the insurer. *Neblett v. Carpenter*, 305 U.S. 297 (1938).

6. Thus, the Court should confirm a plan of rehabilitation submitted by the Insurance Commissioner as Receiver unless it appears (a) that the plan imposes harsher consequences than would a liquidation, or (b) that the Receiver is manifestly abusing his or her authority and discretion or is embarking upon a capricious, untenable, or unlawful course.

#### DEVELOPMENT OF REHABILITATION PLAN

7. Prior to the commencement of these proceedings, the KPS Board of Directors made several attempts to sell KPS to an existing insurer or health care service contractor, all without success. The Receiver has also entertained numerous inquiries and requests for data and documents from prospective buyers, but no reasonable, acceptable offers have been made. The Receiver has exhausted the possibilities of a sale or merger of KPS as a method of rehabilitation. It is the opinion of the Receiver that the potential for a sale or merger of KPS has not existed for quite some time and does not exist at this time.

1           8.     The Receiver has been conducting the business of KPS since August  
2     2, 1999, has taken steps to reduce the expenses of KPS, to preserve its necessary  
3     operational staff, and to determine the causes and conditions which made  
4     delinquency proceedings necessary. (*See, Receiver's First Interim Court Report on*  
5     *file herein.*) The Receiver has also commenced its investigation into the causes  
6     and conditions which contributed to the financial problems of KPS to determine  
7     whether there are potential recoveries for KPS, including whether there is evidence  
8     of actionable claims on behalf of KPS. The investigation will continue during  
9     implementation of the rehabilitation plan, and if evidence of claims and causes of  
10    action are discovered, the Receiver will make an evaluation and decision as to  
11    pursuit of such claims.  
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13           9.     Following entry of the Order of Rehabilitation, there were many  
14    community members actively supporting the rehabilitation of KPS, including a self-  
15    initiated group of regional and local business leaders, elected officials, hospital  
16    representatives, and some KPS member physicians. Based on preliminary financial  
17    statements generated by the Receiver shortly after commencement of these  
18    proceedings, the Receiver advised the community that it appeared KPS would need  
19    approximately \$9 million to resolve its present financial problems and to meet  
20    minimum statutory surplus requirements of \$3 million. The Receiver also advised  
21    the community, among other things, that there would need to be changes made in  
22    KPS' business operations.  
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1           10. The majority of the debt of KPS consists of payments for claims to  
2 participating providers, i.e. member and non-member physicians, and other types of  
3 providers, such as hospitals. It is the opinion of the Receiver that the only way in  
4 which KPS may be successfully rehabilitated is through restructuring of debt,  
5 addition of capital, corporate reorganization, changes in its operations, and  
6 installation of new management.

7           11. During the first few months following the Order of Rehabilitation, the  
8 community group sought broad-based support from most member physicians,  
9 physician providers and facility providers for a restructuring and recapitalization of  
10 KPS. During the past several months, the Receiver has put into place a group of  
11 physicians and business leaders who presently participate in an advisory board to  
12 assist the Receiver. A Summary of the proposed rehabilitation plan for KPS has also  
13 been made available for the past several weeks on the website of KPS and the  
14 Office of the Insurance Commissioner, as well as from the KPS office. The Receiver  
15 has invited comment to the proposed plan from subscribers, providers, creditors and  
16 the general public. The Rehabilitation Plan presented herein is based upon the  
17 Receiver's own evaluation and analysis; however, it is also the result of input and  
18 suggestions by many individuals, creditors, providers, claimants, community and  
19 business leaders, and the Receiver's advisory board.

20           12. The Receiver has performed a financial analysis, among other  
21 evaluations, and has developed a Plan of Rehabilitation (the "Plan") which is  
22 detailed below. The Receiver requests entry of an Order Confirming Receiver's Plan  
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1 of Rehabilitation. During implementation of the Plan, which is anticipated to be over  
2 the course of several years, events or conditions may occur which impact particulars  
3 of the Plan. If so, and as deemed necessary by the Receiver, the Receiver may  
4 petition the Court for confirmation of any material modifications to the Plan. Further,  
5 at any time that the Receiver determines that the Plan or other modifications for  
6 rehabilitation are no longer feasible, or events or conditions have occurred which  
7 render rehabilitation no longer feasible or in the best interests of the policyholders,  
8 creditors and the public, then the Receiver would so advise the Court and in  
9 accordance with law, would request alternative liquidation relief.  
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#### 11 **NOTICE AND OPPORTUNITY FOR HEARING**

12 13. On November 30, 1999, the Court entered a Scheduling Order for the  
13 hearing on this Petition. In accordance with the steps required and the approved  
14 Notice form in the Scheduling Order, upon the filing of this Petition on December 15,  
15 1999, the Receiver will provide the Notice of the filing of the Petition, the hearing  
16 date and time of January 14, 2000, 2:30 P.M., and the deadline of January 7, 2000,  
17 for the filing of objections with the Court and service upon legal counsel for the  
18 Receiver. The Notice will be mailed postmarked on December 15, 1999, as required  
19 in the Scheduling Order to:  
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21 (a) persons or entities who have served and filed a Request for  
22 Special Notice in this matter as provided in CR 66, which has not been previously  
23 withdrawn;  
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1 (b) the former officers and members of the former KPS Board of  
2 Directors at the time of entry of the Order of Rehabilitation,

3 (c) the member physicians of KPS as identified in KPS' present  
4 membership registry,

5 (d) the participating providers of KPS, and

6 (e) the major employer subscriber groups.  
7

8 The Receiver will also mail the Notice to the other general creditors of KPS.  
9 In addition, the Receiver has made arrangements for the legal publication of the  
10 Notice during the week of December 15, 1999, in the principal newspaper(s) of  
11 general circulation in Kitsap, Thurston, Jefferson, Mason, and Clallam counties to  
12 provide notice to individual subscribers, other subscriber groups, and the general  
13 public.  
14

### 15 FINANCIAL INFORMATION

16 14. **Financial Statement.** Attached hereto as **Exhibit A** is the most recent  
17 statutory statement data as of October 31, 1999, of KPS. The statement data is  
18 based on statutory accounting principles as required by the Insurance Code. There  
19 have been no material changes as of November 30, 1999. As reflected thereon, the  
20 total assets are \$22,820,147; total liabilities are \$27,956,987; and total reserves and  
21 other funds are (\$5,136,840). The detailed breakdown of assets, liabilities, reserves  
22 and other funds, and underwriting and investment income is proprietary information  
23 at this time, but will be available for the Court's review *in camera*, if desired. Because  
24 KPS is a going concern and its statutory financial statements are not due to be filed  
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1 with the Office of the Insurance Commissioner until April, 2000, the details should be  
2 treated as proprietary and confidential business data.

### 3 **PLAN OF REHABILITATION**

4 15. **Summary Overview.** The Receiver contemplates that the  
5 rehabilitation period for KPS may extend over a several year period, depending upon  
6 the success of operations. The Plan is for the reorganization of KPS through  
7

8 (a) restructuring as a non-profit, mutual stock corporation under  
9 Chapter 24.06 RCW;

10 (b) conversion of certain assets to cash, and

11 (c) subordination of approximately \$4.6 million in certain liabilities to  
12 direct participating providers and \$1.6 million in certain liabilities to three  
13 participating hospitals, to be evidenced by Surplus Notes of KPS. The Surplus Notes  
14 will be payable, with interest, only after such time as the reorganized corporation  
15 reaches a certain capitalization surplus; and  
16

17 (d) changes in business operations and management.

18 16. **Conversion of Assets to Cash.** The Court has approved the sale of  
19 NorthwestOne, L.L.C., and that sale has closed. KPS has received Five Hundred  
20 Thousand (\$500,000) and will receive an increase to surplus of approximately One  
21 Hundred Seventy Thousand (\$170,000) over the next approximately three-four (3-4)  
22 years. The Receiver continues to explore the potential sale of other assets of KPS,  
23 including the professional office building at 400 East Warren in Bremerton to  
24 improve liquidity.  
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1           **17. Corporate Reorganization.** KPS is presently a non-profit, non-stock  
2 mutual corporation under Chapter 24.06 RCW, with membership in one class. The  
3 "members" of the corporation are medical doctors and doctors of osteopathy,  
4 commonly referred to as "member physicians." The member physicians are also  
5 participating providers with KPS. Other health care professionals are also  
6 participating providers with KPS. Change to a non-profit stock mutual corporation is  
7 necessary to provide for an affirmative act to become a stockholder and to obtain the  
8 clear statutory protection of no stockholder liability. The Receiver will cause the filing  
9 of amended Articles of Incorporation and Bylaws of KPS following approval of this  
10 Petition and during implementation of the Plan. The operational details in the  
11 amendments with respect to, for instance, make-up of the Board of Directors,  
12 qualifications of stockholders, amendments to the Bylaws, and other particulars are  
13 under consideration by the Receiver, pending input from interested persons. The  
14 amendments filed by the Receiver will conform with Chapter 24.06 RCW, and KPS  
15 will retain its non-profit corporate status.

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18           **18. Subordination of Debt.** To preserve the assets of KPS for operations  
19 and rehabilitation purposes, at the beginning of October, 1999,

20                   (a) the Receiver reduced the amount of payments on claims to  
21 three provider hospitals, Jefferson General Hospital, Mason General Hospital, and  
22 Harrison Hospital, which is expected to reach a total amount of approximately \$1.6  
23 million; and  
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1 (b) the Receiver reduced the amount of payments on claims to KPS  
2 direct participating providers on a *prorata* basis, which is expected to reach a total  
3 amount of approximately \$4.6 million.

4 The amount of claims not paid remain as outstanding obligations of KPS, and  
5 will become subordinated debt to be evidenced by a Surplus Note issued by KPS  
6 during rehabilitation. The Surplus Notes will provide for interest commencing upon  
7 approval of this Petition at the rate allowed by law, and will not be paid or payable  
8 until such time as the corporation reaches a capitalization surplus which is in  
9 compliance with law and the Office of the Insurance Commissioner approves  
10 payment. In the event that rehabilitation is not achieved and KPS is forced into  
11 statutory liquidation, the outstanding principal obligations to be subordinated and  
12 evidenced by Surplus Notes under the rehabilitation plan would constitute  
13 participating provider debt for priority purposes in a statutory liquidation.  
14

15 19. **Treatment of General Trade Debt.** General trade creditors who are  
16 currently providing goods or services necessary for the operations of KPS will  
17 continue to be paid on a regular periodic basis. If necessary, the Receiver will work  
18 with other general creditors to arrange for periodic, installment payments in such  
19 amounts as can be met by KPS.  
20

21 20. **Participating Provider Contracts.** The participating provider  
22 contracts for KPS member physicians effective January 1, 2000, have been revised  
23 to reflect the anticipated corporate restructuring of KPS. The contracts provide that  
24 KPS may only make prospective changes with respect to compensation  
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1 arrangements; and consistent with industry standards, that either party to the  
2 contract may terminate without cause on sixty (60) days' notice. The participating  
3 provider contract forms for other providers will be submitted to all contracting  
4 providers prior to July, 2000, subsequent to approval by the Office of the Insurance  
5 Commissioner.

6       21.    **Health Care Services Contractor.** KPS is registered as a health care  
7 service contractor under Chapter 48.44 RCW, and shall continue as such throughout  
8 rehabilitation and in its corporate reorganization. The requirements of Chapter 48.44  
9 RCW shall continue to apply to KPS.  
10

11       22.    **Changes in Business Operations.**

12           (a)   With the reduction in necessary personnel, the Receiver will  
13 continue to explore means to reduce its facilities' expenses, which may include the  
14 sale or partial lease of the professional office building in Bremerton.  
15

16           (b)   The State Health Care Authority ("HCA") and State Department  
17 of Social and Health Services ("DSHS") notified KPS of non-renewal of the state  
18 plan contracts for BHP--Basic Health Plan, PEBB-State employees, and *Healthy*  
19 *Options* for the next applicable contract year beginning in 2000. Due to the  
20 significant losses sustained by KPS in the recent past and which were anticipated to  
21 continue in the operations of the DSHS *Healthy Options* program and the subsidized  
22 BHP program, the Receiver has cancelled those contracts as of October 31, 1999;  
23 however, PEBB remains available through December 31, 1999. KPS will continue to  
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1 provide coverage for non-subsidized BHP and PEBB-State employees through the  
2 end of calendar year 1999.

3 (c) Unless and until it is reasonably demonstrated that contracting  
4 with the HCA or DSHS will be financially viable and beneficial for KPS, the Receiver  
5 does not anticipate that KPS will submit bids or otherwise contract with the state  
6 plans.

7 (d) As the rehabilitation proceedings continue, the Receiver will  
8 implement other changes to the business operations which are deemed reasonable  
9 and necessary in the exercise of the Receiver's judgment and discretion.

10  
11 **23. Management/Advisory Board.**

12 (a) During implementation of the Plan, the Receiver will select and  
13 hire a primary or chief executive for the day-to-day operations of KPS, and will  
14 gradually turn over the duties of the on-site Deputy Receiver John Hamje to such  
15 person. The Receiver has determined to utilize the title of "President" in accordance  
16 with the corporate form of RCW 24.06; however, during the rehabilitation period the  
17 President will be employed by KPS, in rehabilitation, and is anticipated to be  
18 appointed as a Special Deputy Insurance Commissioner/Deputy Receiver. The  
19 President will be supervised by and responsible to the Receiver. The Insurance  
20 Commissioner as statutory Receiver, her designated Receiver James Odiorne, and  
21 Deputy Receiver John Woodall shall continue to supervise the rehabilitation and the  
22 President, and retain all decision-making authority.  
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1 (b) The Receiver will also select members to serve on an Advisory  
2 Board, or Interim Board of Directors, as well as Board Committees, during  
3 implementation of the Plan. The Board's role will be solely to provide input and  
4 advice to the Receiver during rehabilitation. The Receiver contemplates and will  
5 endeavor to select members who are representative of the various interests of KPS  
6 and consistent with the Receiver's Amended Articles of Incorporation and Amended  
7 ByLaws. The Receiver may employ an advisory vote by holders of future  
8 stockholders of the restructured corporation to assist in the Receiver's selection of  
9 such Board members.  
10

11 24. **Proforma Analyses.** The Receiver has performed *proforma* analyses  
12 and projections based upon a number of assumptions which are reasonable at this  
13 time. The *projected* statutory financial statements as of 12/31/99 and 12/31/00 are  
14 attached hereto as **Exhibit B**. As is true with all estimates, these projections are  
15 based on the information available to the Receiver at the time of their development.  
16 There are many variables involved in the development of such estimates, any or all  
17 of which might change under various circumstances. While the Receiver believes  
18 the accompanying projections to be reasonable, there is no way to guarantee future  
19 results.  
20

21 25. **Potential Recoveries for KPS.** During the rehabilitation period, the  
22 Receiver will continue to pursue recoveries from state and federal programs,  
23 voidable transfers which may be identified, and claims or causes of action of KPS  
24 which may be discovered in the Receiver's investigation into the actions or conduct  
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1 of former officers, directors, agents, contractors or other third parties. To the extent  
2 that such recoveries are made, the assets of KPS may be increased, enhancing or  
3 expediting the rehabilitation of KPS.

4       **26. Pending Arbitrations.** Several arbitrations were in process at the  
5 time of entry of the Order of Rehabilitation, and notice of the statutory stay were  
6 provided. The matters are now being evaluated for resolution, and being re-set for  
7 arbitration and handled in the normal course of business.

8       **27. Pending Federal *Qui Tam* and Related Suit.** A pending civil suit in  
9 federal court was stayed following entry of the Order of Rehabilitation. A civil suit in  
10 state court has been remanded by the appellate court but not set for trial. All claims  
11 are unliquidated. During the rehabilitation period, the Receiver will continue to  
12 evaluate these claims and the possibilities for resolution along with pursuit of  
13 insurance coverage, and the undertaking of the Receiver's investigation into  
14 potential claims or causes of action against former officers, former board of  
15 directors, and others for recovery by KPS. Resolution and/or settlement of the  
16 pending claims against KPS will be at the discretion of the Receiver and in keeping  
17 with the Receiver's charge for rehabilitation of KPS.

18       **28. Duration of Rehabilitation Period.** The duration of a rehabilitation  
19 period is difficult to assess, particularly at the commencement of the rehabilitation  
20 plan. Further, as noted above, modifications to the plan may be necessary over time.  
21 Consequently, the Receiver cannot give an estimated length of time for the duration  
22 of the rehabilitation proceedings at this time except to indicate that it will likely take  
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1 several years. As the rehabilitation progresses, the Receiver will make its periodic  
2 statutory reports to the Court with updated and current information.

### 3 **LIQUIDATION COMPARISON**

4 **29. Statutory Liquidation Priorities.** RCW 48.44.033(2) and RCW  
5 48.31.280 set forth the mandatory priorities for distribution of the assets of a health  
6 care service contractor in liquidation, and require that each claim within a higher  
7 classification be paid in full or that adequate funds be retained for payment of such  
8 class before the members of the next lower priority class receive any distribution  
9 from the estate. The statutes further provide that no subclasses which are not  
10 specifically authorized by RCW 48.44.033(2) may be established within a class, and  
11 that no claim by a shareholder, policyholder, or other creditor may circumvent the  
12 statutory priority classes through the use of equitable remedies. The general  
13 description of the statutory priority classifications are as follows:

14 **Class 1 - Administrative Expenses:** Costs and expenses of  
15 administration during rehabilitation and liquidation, including reasonable  
16 compensation for authorized expenses and professional services;

17 **Class 2 - Employee Claims:** Former employee compensation limited  
18 to two months for services performed within one year preceding insolvency  
19 proceedings;

20 **Class 3A - NonParticipating Provider Claims:** Claims of enrolled  
21 participants and their beneficiaries; and the liability of an enrolled participant to any  
22 provider for services provided pursuant to and covered by the health care plan;

1                   **Class 3B - Participating Provider Claims:** Claims of a provider who  
2 is obligated by statute or agreement to hold enrolled participants harmless from  
3 liability for services provided pursuant to and covered by a health care plan;

4                   **Class 4 - General Creditors:** Claims of general creditors;

5                   **Class 5 - Government Claims:** Claims of government entities for  
6 pecuniary loss and expenses which are not loss claims under Class 3;

7                   **Class 6 - Other:** Late-filed claims, and other non-Class 7 or 8 claims;

8                   **Class 7 - Surplus Notes:** Surplus/contribution notes and similar  
9 obligations;  
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11                   **Class 8 - Shareholders:** Claims of shareholders/owners as  
12 shareholders, non- pecuniary losses (fine/penalty) to a government entity.

13           30.   **Liquidation Recoveries.** The Receiver estimates that *if* KPS were in  
14 statutory liquidation at the present time, claimants in statutory classification 3A would  
15 likely receive full payment of their claims without interest; that claimants in statutory  
16 classification 3B (participating providers) would likely receive only twenty-five  
17 percent (25%) of the amount of their claims without interest; and that claimants in  
18 the lower classifications would not receive any distribution from the liquidation  
19 estate. Attached hereto as **Exhibit C** is the Liquidation Forecast reflecting the  
20 Receiver's estimates *if* KPS were in liquidation proceedings instead of rehabilitation  
21 at this time.  
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23           31.   **Plan More Favorable Than Liquidation.** Based upon the Receiver's  
24 estimated calculation of assets and recoveries, pending claims, incurred but not  
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1 reported claims, and loss claims which would become absolute, it is the Receiver's  
2 opinion that the Plan does not impose a harsher consequence on the creditors and  
3 claimants than would a liquidation of KPS.

4 32. **Best Interests of the Subscribers, Creditors, and the Public.** It is  
5 the opinion of the Receiver that the rehabilitation plan set forth herein is in the best  
6 interests of the subscribers, providers and creditors of KPS, and of the public, as  
7 required by the state insolvency statutes.  
8

9 WHEREFORE, the Receiver requests that the Court enter an Order  
10 Confirming the Receiver's Plan of Rehabilitation as set forth in this Petition.

11 DATED this 15<sup>th</sup> day of December, 1999.  
12

13 GORDON, THOMAS, HONEYWELL, MALANCA,  
14 PETERSON & DAHEIM, P.L.L.C.

15 By \_\_\_\_\_  
16 Victoria L. Vreeland, WSBA No. 08046  
17 Special Assistant Attorney General  
18 Counsel to the Receiver  
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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

JAMES T. ODIORNE, Deputy Insurance  
Commissioner  
Receiver of KPS Health Plans, in rehabilitation

JOHN B. WOODALL, Assistant Deputy Insurance  
Commissioner  
Deputy Receiver of KPS Health Plans, in  
rehabilitation

JOHN HAMJE, Special Deputy Insurance  
Commissioner  
Deputy Receiver of KPS Health Plans, in  
rehabilitation

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